



EXHIBIT 10  
DATE 3/17/11  
SB 218

## Montana Agricultural Business Association

"Growing Montana"

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I am Krista Lee Evans and I am speaking on behalf of MABA. We are asking you to please Support SB 218

Montana Agricultural Business Association consists of over 230 locations throughout Montana. Members are purchasers and resellers of agricultural products and developers of agricultural products that hold patents and other intellectual property rights.

MABA took the direction that Senator Steinbeisser and the Senate Ag Committee provided last session. In fact if you place SB 218 next to HB 445 (2009) you will see that a large part of HB 455 is included in SB 218.

The Ag Coalition worked to develop a bill that provides a fair and reasonable process for those who own intellectual property rights (including patents and certificates associated with the plant variety protection act) as well as growers in Montana.

Patents are necessary to ensure that seed companies and other entities, including private companies, individuals, and the University System, are paid for products and in recognition of the investment necessary in developing these products. Some examples of patented plant traits include drought tolerance and minimal growing season. Clearly a valuable option in Montana. The amount of dryland corn that is currently being grown in Montana is an example of the opportunities that technology is providing in Montana agriculture.

The US Supreme Court has identified the incentive to invent and the promotion of full disclosure of inventions as 2 of the overriding policies of federal patent law, policies which state law may not conflict. Kewanee Oil Co. v Bicron Corp, etal. 416 U.S. 470, 480-81, 94 S. Ct. 1879, 40 L.Ed.2d 315. (1974). SB 218 does not impair or conflict with these policies.

There are 2 primary elements to SB 218 -- Sampling and Mediation.

### Sampling

The 7 key points in the sampling section are:

1. If an intellectual property owners makes a claim that their Intellectual Property rights have been infringed upon the claimant must request permission from the grower to enter the property to collect samples.
2. If the grower does not grant permission the claimant may request that a court grant an order allowing the claimant access for sampling provided that certain requirements are met and the court may order the claimant to pay for any physical damages caused as a result of the sampling.
3. Both the claimant and the grower have the right to be present during sampling. If either the grower or the claimant request that the department be present during the sampling the department must be present in order for sampling to occur.
4. The department can conduct the sampling if requested to do so by the claimant or the grower.
5. Any costs associated with sampling must be paid by the claimant unless the claimant and the grower agree otherwise or it is allocated differently through mediation or court order.
6. Either the claimant or the grower can request that an independent laboratory confirm the presence of a protected plant. The costs associated with independent lab confirmation must be paid by the entity

that made the request unless the parties agree otherwise or costs are assigned differently through mediation or court order.

7. The results of the sampling and testing must be made available to the claimant and the grower.
8. Because the information contained in the sampling and testing may be highly protected and sensitive with regard to the actual test that was conducted, the results of all sampling and testing are confidential unless both the grower and the claimant choose to make them public.

### Mediation

Section 4 of the bill addresses a "mandatory mediation" process. There are 5 primary points covered in the mediation section.

1. Put simply, the claimant must go through a mediation process prior to seeking judicial relief.
2. The mediator must be agreed to by both the claimant and the grower. Preference must be given to mediators with experience in intellectual property claims. Both parties must exercise good faith and diligence in choosing a mediator.
3. If after 90 days the two parties are not able to agree on a mediator either party may seek judicial relief.
4. Costs associated with the mediation are shared equally unless agreed to be allocated differently by the parties.
5. Deliberations and outcome of the mediation may not be made public unless both entities agree.

One very important portion of this section is contained in subsection (8). The requirement that mediation occur prior to seeking judicial relief DOES NOT apply to a claimant that is seeking a court order to gain access for sampling purposes.

The two other elements provided for in SB 218 are venue and rulemaking. We feel that both of these sections are fair. If the department is to conduct sampling, it is appropriate to require the department to adopt a sampling protocol through rulemaking.

The companies that make up the Montana Ag Business Association want to be good corporate citizens and neighbors and continue to provide technology to Montana's farmers and ranchers. Like other industries it is critical that agricultural businesses have consistency and reliability. The process outlined in SB 218 is fair and equitable to the grower and the entity protecting their intellectual property right and provides. We all know that there is a balance that must be achieved in addressing property rights. SB 218 provides this balance and is a good compromise.

Thank you for your time and attention - please support SB 218.